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August 3, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication
Service Rules for 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150
File No. EB-11-MDIC-0004

Dear Ms. Dortch:

On June 6, 2011, Free Press filed an informal complaint against Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) for violating conditions made applicable to the Upper 700 MHz Band “C Block” licensee by Section 27.16 of the Commission’s rules, 47 C.F.R. § 27.16. That complaint is attached hereto.

Following correspondence between Free Press and Verizon Wireless, and Free Press’s request that the Commission designate the proceeding as “permit-but-disclose” for *ex parte* purposes, the Enforcement Bureau (“Bureau”) determined on July 18, 2011, to designate the proceeding as “exempt” pursuant to Section 1.1200 *et seq.* of the Commission’s rules, 47 C.F.R. §§ 1.1200, 1.1204(b)(5).

Despite the proceeding’s current designation, Free Press has committed to providing notice after meetings with Commission staff regarding the complaint. The Bureau has assigned the complaint the file number listed above, but has not established a specific docket for this proceeding. For that reason, we file this notice in the 700 MHz service rules docket for the sake of making it available via the Commission’s electronic comment filing system.

On Monday, August 1, 2011, Free Press Political Adviser Joel Kelsey and the undersigned met with Mark Stone, Chief of Staff for Commissioner Copps, and Margaret McCarthy, Commissioner Copps’ Policy Advisor, Wireline. During the meeting, the Free Press participants briefly summarized the complaint’s allegations that Verizon Wireless has engaged in denying, limiting, or restricting its customers access to certain applications and devices in violation of the C Block rules, in the manner explained in greater detail in the attached complaint.

We respectfully submitted that the Commission must investigate fully this apparent violation of its rules, and described in some detail the harms to consumers and to innovation when these “open application” and “open device” requirements are ignored by the licensee subject to them.

With respect to the specific tethering applications that Verizon Wireless has sought to remove from application stores and prohibit its customers from using, we noted that consumers value the ability to tether for the convenience and utility it can provide. We also explained that Verizon Wireless's protests regarding the amount of data that users of tethering applications may consume should have no bearing on the determination of the carrier's compliance with the C Block rules.

In sum, Verizon Wireless cannot by way of its terms of service purport to supersede the Commission's rules, and those terms of service clearly attempt to deny, limit, or restrict customers on C Block spectrum the ability to use the applications and devices of their choice. Furthermore, Section 27.16(c)(1) of the rules makes clear that "[t]he potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network" of the C Block licensee. Finally, limiting and restricting access to tethering application cannot reasonably be justified on the basis of bandwidth usage when customers have purchased either (a) an unlimited data plan from Verizon Wireless or (b) a tiered data offering, under which they pay for every gigabyte of data up to and over a specified monthly allotment. Whether a customer uses data on her handset or on a laptop "tethered" to that handset matters not.

Finally, in addition to summarizing the merits of the complaint, the Free Press participants briefly discussed the procedural posture of the matter. We reiterated our suggestion that – whatever the designation of the proceeding – the Commission should open a docket to accept comments and submissions from interested parties on the effect of apparent C Block rules violations.

Respectfully submitted,

/s/ Matthew F. Wood

Matthew F. Wood
Policy Director
Free Press

cc: Mark Stone
Margaret McCarthy